

January 21, 2022

Jennifer Raitt, Director
Department of Planning and Community Development
Arlington Town Hall Annex
Arlington, MA, 02476

Dear Ms. Raitt:

Over the past year, there have been several occasions where the Zoning Board of Appeals, through the course of its work, has needed to interpret sections of the Zoning Bylaw which were unclear or out-of-step with current practice. On behalf of myself, I am proposing six Warrant Articles addressing many of these concerns. The proposed articles are listed below.

ARTICLE ____ ZONING BYLAW AMENDMENT / ZONING BOARD OF APPEALS RULES AND REGULATIONS

To see if the Town will vote to amend the Zoning Bylaw to update Section 3.2.3 Rules and Regulations to allow the Zoning Board of Appeals to amend its own rules and regulations; or take any action related thereto.

ARTICLE ____ ZONING BYLAW AMENDMENT/ HALF STORY

To see if the Town will vote to amend the Zoning Bylaw to update Section 2 DEFINITIONS and add a new subsection under Section 5.3 to clarify how the area of a half story is to be calculated; or take any action related thereto.

ARTICLE ____ ZONING BYLAW AMENDMENT / PORCH

To see if the Town will vote to amend the Zoning Bylaw to update Section 2 DEFINITIONS and Section 5.3.9 Projections into Minimum Yards to further define what constitutes a porch and include porches to the list of allowable projections into minimum yards; or take any action related thereto.

ARTICLE ____ ZONING BYLAW AMENDMENT / YARD ENCROACHMENT

To see if the Town will vote to amend the Zoning Bylaw to update Section 5.3.9 Projections into Minimum Yards to require a special permit before floor area in a setback is enclosed; or take any action related thereto.

ARTICLE ____ ZONING BYLAW AMENDMENT / LARGE ADDITIONS

To see if the Town will vote to amend the Zoning Bylaw to update Section 5.4.2 Large Additions to clarify how the applicable area is to be calculated; or take any action related thereto.

ARTICLE ____ ZONING BYLAW AMENDMENT / UNSAFE STRUCTURE

To see if the Town will vote to amend the Zoning Bylaw to update Section 8.1.5 Unsafe Structure to define who may make the determination that a structure is unsafe; or take any action related thereto.

As we have discussed, I am forwarding these to you for consideration by the Arlington Redevelopment Authority at its January 24 meeting. If the ARB would be willing to insert any of these proposed articles into the Warrant, I would be most appreciative. Otherwise, I have prepared applications for each of these proposed articles, and I will gather signatures ahead of Friday's noon deadline.

In the pages which follow, I provide an explanation of each proposed article along with proposed language for the revisions. Please let me know if you have any questions. I will attend Monday night's meeting, and I am willing to address any questions at that time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Christian Klein', with a long horizontal flourish extending to the right.

Christian Klein

ZBA Representative to Zoning Bylaw Working Group

Attachments:

- Zoning Bylaw Amendment / Zoning Board of Appeals Rules and Regulations
- Zoning Bylaw Amendment/ Half Story
- Zoning Bylaw Amendment / Porch
- Zoning Bylaw Amendment / Yard Encroachment
- Zoning Bylaw Amendment / Large Additions
- Zoning Bylaw Amendment / Unsafe Structure

ZONING BYLAW AMENDMENT / ZONING BOARD OF APPEALS RULES AND REGULATIONS

I recommend reducing this section to the essential portion with the elimination of subsection A under 3.2.3 in its entirety. The text includes an unenforceable provision to require oaths and many other requirements which are included in state law or in the ZBA Rules and Regulations. The ZBA is the only town board which requires a 2/3 majority of town meeting to change its rules, which is contrary to state law.

3.2.3 Rules and Regulations

The Board of Appeals shall adopt rules and regulations for the administration of its powers and shall file a copy of such regulations with the Town Clerk. The Board's regulations shall include rules for hiring outside consultants.

~~A. The Chair of the Board of Appeals, or in their absence the Acting Chair, may administer oaths, but must do so for hearings involving G.L. c. 40B, summon witnesses and call for the production of papers. All hearings shall be open to the public. The Board of Appeals and all permit and special permit granting authorities shall hold hearings and render decisions in accordance with the applicable time limitations as set forth in G.L. c. 40A §§ 9 and 15. The Board of Appeals shall cause to be made a detailed record of its proceedings which in the case of G.L. c. 40B hearings shall require that all testimony be electronically recorded, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reasons for its decisions, and of its other official actions, copies of all of which shall be filed within 14 days in the office of the Town Clerk and the office of the Arlington Redevelopment Board and shall be a public record, and notice of decisions shall be mailed immediately to the petitioner and to the owners of all property deemed by the Board of Appeals to be affected thereby, including the abutters and the owners of land next adjoining the land of the abutters, notwithstanding that the abutting land or the next adjoining land is located in another city or town, as they appear on the most recent local tax list, and to every person present at the hearing who requests that notice be sent to them and states the address to which such notice is to be sent. Upon the granting of a limited or conditional zoning variance or special permit, the Board of Appeals shall issue to the land owner a notice, certified by the chair or clerk, containing the name and address of the land owner, identifying the land affected, and stating that a limited or conditional variance or special permit has been granted which is set forth in the decision of the Board on file in the office of the Town Clerk. No such variance or permit shall take effect until such notice is recorded in the Middlesex County Registry of Deeds.~~

~~The fee for recording such notice shall be paid by the owner and the notice shall be indexed in the grantor index under the name of the owner of record.~~

~~The concurring vote of all members of the Board shall be necessary to reverse any order or decision of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Bylaw, or to effect any variance in the application of this Bylaw.~~

ZONING BYLAW AMENDMENT / HALF STORY

I recommend the editing of the existing definition of half story and the adding a new subsection to clarify what building area is included in the calculation of the half story. Areas outside the building wall will no longer count. This will also work towards the goal of moving regulations out of the definitions and into the body of the bylaw.

Story, Half: A story ~~which is under a gable, hipped, gambrel roof, or other sloped roof with a minimum slope of 2:12, where less than one half the floor area measured from the underside of the roof framing to the finished floor below~~ has a clear height of 7 feet 0 inches or more as regulated under Section 5.3.23.

5.3.23 Half Story

- A. To be considered a half story, the proposed area must be under a gable, hipped, gambrel, or other sloped roof with a minimum slope of 2:12. The proposed clear height is to be taken from the underside of the roof structural framing to the top of the finished floor below. The proposed area is to be measured relative to the gross floor area of the story next below excluding porches and decks.

ZONING BYLAW AMENDMENT / PORCH

The Board has had many cases requesting a special permit to construct a “farmer’s porch” or other large unenclosed porch at the front of a residence. The Board routinely approves these projections into the front yard with the condition that the added portion of the building will not count towards the establishment of the foundation wall in a position closer to the street. We noted that “Porch” is not included in this section, and I am seeking to add it.

In addition, Arlington makes no differentiation between enclosed porches and unenclosed porches. The interpretation from Inspectional Services is that a roofed structure is considered enclosed. I have proposed amending the definition of “Porch” to clarify that it has at least one open side. Otherwise, it is just a part of the building. An alternative approach would be to separately define “Porch, Enclosed” and “Porch, Unenclosed” in the bylaw.

Porch: A covered area, open on at least one side, projecting from and structurally connected to a building.

5.3.9 Projections into Minimum Yards

- A. Projecting eaves, chimneys, bay windows, balconies, open fire escapes, porches, and enclosed entrances not more than 25 square feet in floor area or more than one story high, which do not project more than three and one-half feet beyond the line of the foundation wall may extend beyond the minimum yard regulations otherwise provided for the district in which the structure is built. ~~EPorches and enclosed entrances~~ larger than that allowed above may extend into the minimum yard regulations otherwise provided for the district by special permit.

ZONING BYLAW AMENDMENT / YARD ENCROACHMENT

The zoning bylaw has a loophole allowing the construction of enclosed space within yard setbacks without the need for a variance. A porch can be added by special permit. Inspectional Services allows enclosing a porch by right, making it interior space. Another special permit would allow for a new porch, which could then be enclosed. It is my opinion that this is not the intent of the bylaw. The proposed amendment would require that enclosing porches and other similar spaces can only be done with a special permit.

5.3.9 Projections into Minimum Yards

- D. Unenclosed porches, decks, steps, and landings in the required setback are not considered to be within the foundation wall and may not be enclosed, extended, or built upon except by special permit. Enclosing a porch, deck, steps, or landing shall not allow for any further projection into the required setback by later enclosed or unenclosed additions.

ZONING BYLAW AMENDMENT / LARGE ADDITIONS

The determination of whether a proposed addition is a “large addition” can be made using two different requirements. There is some confusion whether it is the less or more restrictive requirement which applies. I am proposing to indicate that the more restrictive applies. In addition, Inspectional Services has interpreted this section to allow deducting the area of an alteration or addition that falls within the foundation wall from the area considered for the determination of a large addition. (A 1,000 SF addition where 251 sq. ft. are within the foundation wall is not a “Large Addition.”) I think this is contrary to the bylaw, and the proposed language is intended to address this issue.

5.4.2 Dimensional and Density Requirements

The dimensional and density requirements in this Section apply to principal and accessory uses and structures in the Residential districts. Additional dimensional and density regulations affecting all districts can be found in Section 5.3.

B. Exceptions to Minimum Lot Area, Minimum Front Yard Lot Width, Frontage, Open Space, Side Yard, and Height Requirements in the R0, R1, and R2 Districts.

(6) Large Additions. No alteration or addition which increases the gross floor area of a building by the lesser of (a) 750 square feet or more, or ~~by~~ (b) 50% or more of the building's gross floor area on the date of application for a permit, or because of cumulative alterations or additions during the previous two years, shall be allowed unless:

- The addition is constructed entirely within the existing foundation walls, or
- The Board of Appeals, acting pursuant to Section 3.3, finds that the alteration or addition is in harmony with other structures and uses in the vicinity.

In making its determination, the Board of Appeals shall consider, among other relevant facts, the proposed alteration or addition's dimensions and setbacks in relation to abutting structures and uses. The increase in gross floor area used to determine the applicability of this section shall include all proposed sources of increased gross floor area.

ZONING BYLAW AMENDMENT / UNSAFE STRUCTURE

This proposed change is to establish who may make the determination of whether a structure is unsafe. There have been cases where a contractor has removed a portion of a building after determining on their own that the structure was unsafe. This allows that portion of the structure to be rebuilt, when it would not ordinarily be allowed. I am proposing that the determination be made solely by the Director of Inspectional Services to be certain that the proper determination is being made.

In a prior iteration of this article, I had also allowed the determination to be made by a Certified Structural Engineer, but that was removed at the request of Inspectional Services.

8.1.5 Unsafe Structure

Except as covered under Section 8.1.7, any structure determined to be unsafe by the Director of Inspectional Services may be restored to a safe condition, provided such work on any nonconforming structure shall be completed within one year of the determination that the structure is unsafe, and it shall not place the structure in greater nonconformity. A structure may be exempted from this provision by a special permit granted by the Board of Appeals or, in cases subject to Environmental Design Review, Section 3.4., the Arlington Redevelopment Board.